

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Children's Television Obligations
Of Digital Television Broadcasters

MM Docket No. 00-167

REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") urges the Commission to refrain from regulating interactive television services.¹ DIRECTV certainly understands and shares the Commission's interest in protecting children from inappropriate material. But it believes that the *FNPRM*'s proposed interactivity ban is a flawed tool for the job.

Both the Commission and DIRECTV hope to encourage the development of "interactive services that enhance the educational value of children's programming."² Even today, however, the proposed ban risks stifling the very communications that the Commission³ and the public interest community⁴ seek to foster. And the problem will only get worse when interactive services evolve – as they surely will – in ways we cannot predict.

¹ *Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 22943, 22967 (2004) ("*FNPRM*") (tentatively concluding to prohibit interactivity during children's programming that connects viewers to commercial matter unless parents "opt in" to such services).

² *Id.*

³ *Id.*, 19 FCC Rcd. at 22962 (discussing the value of interactive applications to children).

⁴ *See, e.g.*, Comments of the Children's Media Policy Coalition *et al.* ("Children's Coalition") at 2 (seeking to avoid "impeding the development of interactive technologies and interactive content that will enhance the educational and entertainment value of the program").

I. DIRECTV HAS ALWAYS HELPED PARENTS CONTROL WHAT THEIR CHILDREN WATCH

DIRECTV shares the Commission's concern about exposing children to material their parents deem inappropriate. This is why DIRECTV has, since its inception, made parental controls an integral part of its service. Every DIRECTV subscriber can require a passcode to be entered to allow viewing of channels that they identify or to allow viewing of programs exceeding V-chip and MPAA rating limits that they specify.

Locks and limits are easy to use. And instructions can be found in a number of places: by pressing "menu" on the remote control, the customer's DIRECTV system manual, the DIRECTV website, the "DIRECTV Basics" program (which loops continuously on channel 201), and periodic reminders sent in bills and e-mails.

II. REGULATION OF INTERACTIVE LINKS MAY INHIBIT THE DEVELOPMENT OF INTERACTIVE SERVICES THAT WILL BENEFIT PARENTS AND CHILDREN ALIKE

Again, DIRECTV agrees with the Commission's goals in this proceeding. Children should not be exposed to material their parents deem inappropriate. But the specific proposal at issue – to ban interactive links to commercial material absent parental "opt-in" – is one to which DIRECTV must object.

This is not simply because, as some have observed, the Commission very likely lacks statutory authority to do so.⁵ Nor is it solely because a prohibition on commercial links raises significant constitutional issues.⁶ Nor is it because the *FNPRM* itself is

⁵ See NAB Comments at 5-6 (citing 47 U.S.C. § 303a and noting that Internet links are not commercials "on television" for purposes of the Children's Television Act.); Disney Comments at 10-11 (also discussing statutory authority).

⁶ See NAB Comments at 10-11 (arguing that (1) there are no links from Children's programming to the Internet today; (2) any such links would require "affirmative steps" on the part of the user, making the constitutional case for banning them more difficult; and (3) an "opt-in" requirement would not be the least restrictive way of addressing any problems that might develop in the future).

impermissibly vague about which obligations it seeks to impose on which parties.⁷ Nor is it even because neither programmers nor distributors seem to have any idea how an opt-in rule might be applied to interactive services.⁸

DIRECTV's primary objection to the proposed interactivity ban is that it is far too blunt a regulatory tool. Wise public policy should seek to prevent inappropriate communications as much as possible, while still permitting socially desirable communications. The Commission has recognized this: in concluding not to restrict direct, interactive links in children's programming, it found that such links "could provide beneficial educational and informational content in children's programs" and hesitated in "plac[ing] unnecessary barriers in the way of technical development in this area that may take place."⁹ Now, though, the Commission seeks a ban on all links from children's programming to commercial material (as that term is now broadly defined), absent parental opt-in.¹⁰ Such a ban, by its very nature, does not distinguish between questionable and beneficial communications.

⁷ It is not clear, for example, whether the FCC proposes to prohibit only Internet links or all conceivable links to material deemed commercial in nature. Compare *FNPRM*, 19 FCC Rcd. at 22967 (discussing Internet websites) with *id.* at 22968 (discussing commercial matter more generally); see also Disney Comments at 7 (referring to the *FNPRM* as a "moving target" in this regard, in part because it only "mentions one type of interactivity"). Nor is it clear whether the ban would apply to broadcast programming only, broadcast and cable programming, or to interactive features offered by MVPDs separately from such programming. See *FNPRM*, 19 FCC Rcd. at 22967 (encouraging *broadcasters* to develop interactive services).

⁸ See Disney Comments at 13 ("The most obvious practical problem is how to obtain consent given that broadcasters and programmers do not have a direct relationship with viewers of their programming. Would parents give their consent to a station, a network, or their MVPD, or some combination thereof? How often and under what basis would consent be necessary, *i.e.*, would consent be given on a per-channel, per-program, per-advertiser or per-click basis?").

⁹ *FNPRM* 19 FCC Rcd. at 22962.

¹⁰ See *id.* at 22963 (revising definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming).

To take just one example, DIRECTV now offers the DIRECTV Kids Mix, a “mosaic” made up of six different children’s channels (an image of DIRECTV Kids Mix is attached as Exhibit 1 to these Reply Comments). DIRECTV Kids Mix thus highlights programming that is appropriate for children and helps direct subscribers to that programming. Yet the Commission’s proposal is ambiguous enough that it could be interpreted (incorrectly, in DIRECTV’s view) to prohibit even a beneficial innovation such as the DIRECTV Kids Mix.

The interactive link ban is an overly broad tool that cannot distinguish between questionable communications (such as some cited by the Children’s Coalition) and desirable ones (such as the DIRECTV Kids Mix). And, of course, as interactive technologies and services evolve, an interactive link ban will become even less effective at this task.¹¹ Given this state of affairs, and the potential interactivity provides for enhancing the educational value of children’s programming, DIRECTV believes the Commission was correct in its initial determination not to regulate.

* * *

An interactive link ban would create uncertainty around applications that are unambiguously pro-child and pro-family. As interactive applications evolve, this problem will only get worse. DIRECTV believes the Commission can protect children without threatening innovation in an area that holds so much promise for adults and children alike.

¹¹ The vast majority of commenters in this proceeding agree that nobody knows what interactive services will look like in five years. They describe interactive television, respectively, as a “nascent and developing service,” NAB Comments at 2, as a “work in progress, not a service broadly available to consumers except in limited applications geared to adults,” Nickelodeon Comments at 1, as being “in [its] early stages,” Disney Comments at i, and as requiring an “adequate initial period of unfettered experimentation to speed the innovation process.” EchoStar Comments at 2.

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Respectfully Submitted,

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Exhibit 1

DIRECTV Kids Mix

KIDSMIX



Animal Planet 11:00a – 11:30a

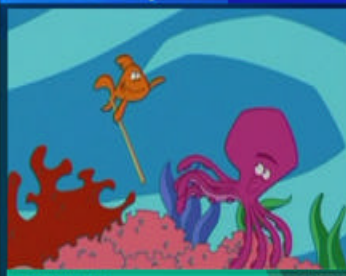
Adoption Tales

A rescuer must decide whether to give a donkey...



ANIMAL PLANET

282



DISNEY

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TOON DISNEY

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CARTOON NETWORK

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NOGGIN

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NICK

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